

The Honorable Marsha J. Pechman

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IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

J & J CELCOM; LUPE AZEVEDO;
BRADY RANCH; WOODROW W.
HOLMES, Jr.; LUCILLE HOSS;
JAMES P. KENNEDY; DANIEL
MURRAY; RAJIVE OBEROI;
KENNETH L. RAMSEY; GARY R.
ROBBINS and JOANNE ROBBINS;
and S&D PARTNERSHIP,

Plaintiffs,

v.

AT&T WIRELESS SERVICES, INC;
McCAW CELLULAR INTERESTS,
INC.; AT&T WIRELESS SERVICES
OF COLORADO, LLC; AT&T
WIRELESS SERVICES OF IDAHO,
INC; AT&T WIRELESS SERVICES
OF WASHINGTON, LLC; BOISE
CITY CELLULAR PARTNERSHIP
(F/K/A NEW BOISE CITY CELLULAR
PARTNERSHIP); FORT COLLINS-
LOVELAND CELLULAR
TELEPHONE COMPANY (F/K/A
NEW FORT COLLINS-LOVELAND
CELLULAR TELEPHONE
COMPANY); GREELEY CELLULAR
COMPANY (F/K/A NEW GREELEY
CELLULAR COMPANY) and YAKIMA
CELLULAR TELEPHONE COMPANY
(F/K/A NEW YAKIMA CELLULAR
TELEPHONE COMPANY),

Defendants.

No. CV03-2629

FIRST AMENDED COMPLAINT



03-CV-02629-MISC

FIRST AMENDED COMPLAINT

No. CV03-2629

ORIGINAL

Cutler Nylander & Hayton
Professional Service Corporation
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Telephone 206 340-4600

1 Plaintiffs by their attorneys for their complaint against Defendants allege
2 as follows:

3 4 I. INTRODUCTION

5 1. Plaintiffs were long-term investors in four highly successful
6 partnerships: Boise City Cellular Partnership, Fort Collins-Loveland Cellular
7 Telephone Company, Greeley Cellular Telephone Company and Yakima
8 Cellular Partnership (collective, the "Partnerships"). The Partnerships owned
9 and operated wireless systems as part of the nation-wide system controlled by
10 AT&T Wireless Services, Inc. ("AWS"), one of the largest wireless
11 communications service providers in the United States. Plaintiffs bring this
12 action to prevent irreparable injury to themselves and the Partnerships by AWS
13 and its wholly-owned shell corporation subsidiaries, McCaw Cellular Interests,
14 Inc. AT&T Wireless Services of Colorado, LLC, AT&T Wireless Services of
15 Idaho, Inc. and AT&T Wireless Services of Washington, LLC. Collectively,
16 these subsidiaries are referred to as "AWS Affiliates." By reason of its stock
17 holdings and other equity ownership as well as the common directors and
18 officers, AWS owns and controls the AWS Affiliates.

19
20 2. An AWS Affiliate managed each of the four Partnerships and AWS,
21 through an Affiliate, owned more than 95% of the outstanding interests of each
22 Partnership. The AWS Affiliates are shell entities that exist for no other purpose
23 than to enable and to facilitate AWS' exercise of ownership and control over the
24 operating entities such as the Partnerships. The AWS affiliates have no offices
25 or employees separate from AWS. Their nominal offices are at AWS'

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1 headquarters in Redmond, Washington, and all of their nominal officers and
2 employees are AWS' officers and employees. Upon information and belief, any
3 actions taken by the Affiliates were actually carried out by AWS officers,
4 directors and employees.

5 3. Upon information and belief, AWS and its Affiliates used accounting
6 and other practices discussed below to make each Partnership appear less
7 valuable than it was in fact. Defendants then used their domination and control
8 over the Partnerships to initiate, time, structure and price the "sale" of all of the
9 assets of each of the Partnerships to newly-created partnerships that were
10 wholly-owned by AWS. The "sale" of the assets to the new partnerships which
11 defendants did not even treat as a sale for tax purposes was a sham and
12 device with no other purpose than to eliminate the minority owners from the
13 Partnerships for inadequate consideration.

14 4. Defendants' actions constitute material breaches of each of the
15 partnership agreements and breaches of fiduciary duty.

16 II. JURISDICTION AND VENUE

17 5. This Court has jurisdiction pursuant to 28 U.S.C.A. 1332. As
18 detailed below, all of the Defendants are citizens of the State of Washington and
19 none of the Plaintiffs are citizens of the State of Washington. The amount in
20 controversy exceeds \$75,000, exclusive of interest and costs.

21 6. Venue is appropriate in this judicial district under 28 U.S.C.A.
22 139(a).

23 III. PARTIES AND RELEVANT ENTITIES

24 7. Defendant AT&T Wireless Services, Inc., AWS, is a corporation
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1 formed under Delaware law having its principal place of business at Redmond,
2 Washington. AWS is the successor to McCaw Cellular Communications, Inc.
3 which was acquired by AT&T Corp. in 1994 and subsequently spun off as an
4 independent company in July 2001. AWS is the second-largest wireless carrier,
5 based on revenues, in the United States with 21 million subscribers, and
6 full-year 2002 revenues exceeding \$15.6 billion.

7 8. Defendant McCaw Cellular Interests, Inc. ("McCaw") is a
8 corporation formed under Washington law. McCaw is a wholly-owned
9 subsidiary of AWS having its principal place of business at Redmond,
10 Washington.

11 **Boise City Cellular Partnership**

12 9. Boise City Cellular Partnership ("Boise Cellular") owned the A Block
13 cellular license issued by the Federal Communications Commission ("FCC") for
14 the metropolitan statistical area of Boise, Idaho.

15 10. Defendant AT&T Wireless Services of Idaho, Inc. ("AWS-Idaho") is
16 corporation formed under Idaho law. It is a wholly-owned subsidiary of AWS
17 having its principal place of business at Redmond, Washington. It owned a
18 majority of Boise Cellular and controlled the operations of that Partnership.

19 11. Plaintiff J & J Celcom is a Kentucky partnership with its principal
20 place of business in Kentucky. All of the partners of J&J Celcom are citizens of
21 Kentucky. It owned a 0.9431% interest in Boise Cellular prior to the forced
22 liquidation of its interest, as detailed below, for which it received \$699,922.

23 12. Defendant Boise City Cellular Partnership, formerly known as New
24 Boise City Cellular Partnership ("New Boise"), is a newly formed partnership
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1 having its principal place of business at Redmond, Washington. It is
2 wholly-owned subsidiary by subsidiaries of AWS and is the successor to Boise
3 City Cellular Partnership, as described further in paragraph 9 of this Complaint.
4 AWS and its subsidiaries first chose to call this newly formed partnership "New
5 Boise City Cellular Partnership" and later changed the name to that of the
6 original partnership. For clarity, the new partnership will be referred to as "New
7 Boise" in this complaint.

8 **Fort Collins-Loveland Cellular Telephone Company and Greeley**
9 **Cellular Telephone Company**

10 13. Fort Collins-Loveland Cellular Telephone Company ("Fort Collins
11 Cellular") was a partnership that owned the A block cellular license issued by
12 the FCC for the metropolitan statistical area of Fort Collins-Loveland, Colorado.

13 14. Greeley Cellular Telephone Company ("Greeley Cellular") was a
14 Partnership that owned the A block cellular license issued by the FCC for
15 certain other areas in Colorado.

16 15. Defendant AT&T Wireless Services of Colorado, LLC ("AWS-CO")
17 is a limited liability company formed under Delaware law. It is a wholly-owned
18 subsidiary of AWS having its principal place of business at Redmond,
19 Washington. AWS-CO owned a majority of Fort Collins Cellular and Greeley
20 Cellular and controlled the operation of these Partnerships.

21 16. Defendant Fort Collins-Loveland Cellular Telephone Company,
22 formerly known as New Fort Collins-Loveland Cellular Telephone Company
23 ("New Fort Collins"), is a partnership formed under California law. It is
24 wholly-owned by AWS-CO and McCaw and has its principal place of business
25

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1 at Redmond, Washington. It is the successor to Fort Collins-Loveland Cellular
2 Telephone Company, as described further in paragraph 13 of this Complaint.
3 AWS and its subsidiaries first chose to call this newly formed partnership "New
4 Fort Collins-Loveland Cellular Telephone Company" and later changed the
5 name to that of the original partnership. For clarity, the new partnership will be
6 referred to as "New Fort Collins" in this complaint.

7 17. Defendant Greeley Cellular Telephone Company, formerly known
8 as New Greeley Cellular Telephone Company ("New Greeley"), is a partnership
9 formed under Colorado law. It is wholly owned by defendants AWS-CO and
10 McCaw and has its principal place of business at Redmond, Washington. It is
11 the successor to Greeley Cellular, as described further in paragraph 14 of this
12 Complaint. AWS and its subsidiaries first chose to call this newly formed
13 partnership "New Greeley Cellular Telephone Company" and later changed the
14 name to that of the original partnership. For clarity, the new partnership will be
15 referred to as "New Greeley" in this complaint.

16 18. Plaintiff Lupe Azevedo, is a citizen of the State of California. She
17 owned a 0.2183% interest in Greeley Cellular prior to the forced liquidation of
18 her interest for \$114,119, as detailed below.

19 19. Plaintiff Brady Ranch is a California partnership with its principal
20 place of business in California and all of the owners are citizens of California. It
21 owned a 0.0075% interest in Greeley Cellular prior to the forced liquidation of its
22 interest for \$3,995, as detailed below.

23 20. Plaintiff Woodrow J. Holmes, Jr., is a citizen of the State of
24 California. He owned a 0.0325% interest in Greeley Cellular prior to the forced
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1 liquidation of his interest for \$17,122, as detailed below.

2 21. Plaintiff Lucille Hoss is a citizen of the State of New York. She
3 owned a 0.0218% interest in Greeley Cellular Telephone Company prior to the
4 forced liquidation of her interest for \$11,415, as detailed below.

5 22. Plaintiff James P. Kennedy is a citizen of the State of Maryland. He
6 owned a 0.3007% interest in Fort Collins Cellular and a 0.2183% interest in
7 Greeley Cellular prior to the forced liquidation of his interests for \$144,119 and
8 \$115,000, respectively.

9 23. Plaintiff Daniel B. Murray, is a citizen of the State of California. He
10 owned a 0.2183% interest in Greeley Cellular prior to the forced liquidation of
11 his interest for \$115,000, as detailed below.

12 24. Plaintiff Rajive Oberoi is a citizen of the State of Minnesota. He
13 owned a 0.2183% interest in Greeley Cellular prior to the forced liquidation of
14 his interest for \$115,000, as detailed below.

15 25. Plaintiff Kenneth L. Ramsey is a citizen of the State of Kentucky.
16 He owned a 0.2183% interest in Greeley Cellular prior to the forced liquidation
17 of his interest for \$115,000.

18 26. Plaintiffs Gary R. Robbins and Joanne Robbins are citizens of the
19 State of California. Together they owned a 0.1002% interest in Fort Collins
20 Cellular prior to the forced liquidation of their interests for \$48,024.

21 27. Plaintiff S & D Partnership is a California partnership having its
22 principal place of business in the State of California. All of the partners of S & D
23 Partnership are citizens of California. It owned a 0.3007% interest in Fort
24 Collins Cellular. It received a liquidating distribution from Fort Collins Cellular in
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1 the amount of \$144,119.

2 **Yakima Cellular Partnership**

3 28. Yakima Cellular Partnership ("Yakima Cellular") was a partnership
4 that owned the A block cellular license issued by the FCC for the metropolitan
5 statistical area of Yakima, Washington.

6 29. AT&T Wireless Services of Washington, LLC ("AWS-WA") is a
7 limited liability company formed under Oregon law. It is a wholly-owned
8 subsidiary of AWS having its principal place of business at Redmond,
9 Washington. AWS-WA owned a majority of Yakima Cellular and controlled the
10 operation of this partnership.

11 30. Defendant Yakima Cellular Telephone Company, formerly known
12 as New Yakima Cellular Telephone Company ("New Yakima") is a partnership
13 wholly owned by AWS-WA and McCaw and has its principal place of business
14 at Redmond, Washington. It is the successor to Yakima Cellular, as described
15 further in paragraph 28 of this Complaint. AWS and its subsidiaries first chose
16 to call this newly formed partnership "New Yakima Cellular Telephone
17 Company" and shortened the name by dropping "New". For clarity, the new
18 partnership will be referred to as "New Yakima" in this complaint.
19

20 31. Plaintiff Kenneth L. Ramsey, see paragraph 25 of this Complaint,
21 owned a 0.3866% interest in Yakima Cellular prior to the forced liquidation of his
22 interest for \$188,719.

23 32. Plaintiff S&D Partnership, see paragraph 27 of this Complaint,
24 owned a 0.3866% interest in Yakima Cellular. It received a payment of
25 \$188,719 for its interest in Yakima Cellular.
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1 **AWS Affiliates**

2 33. McCaw, AWS-CO, AWS-Idaho, AWS-WA, New Boise, New Fort
3 Collins, New Greeley and New Yakima are referred to collectively as the "AWS
4 Affiliates." By reason of its stock holdings and other equity ownership as well as
5 the common directors and officers, AWS owns and controls the AWS Affiliates.

6 **IV. ALLEGATIONS**

7 34. AWS operated the Partnerships' cellular systems (Boise Cellular,
8 Fort Collins Cellular, Greeley Cellular and Yakima Cellular) as part of larger
9 calling areas managed by subsidiaries of AWS and its predecessor.

10 35. The regional method of operation presented many opportunities for
11 abusive self-dealing practices that were challenged in a number of class actions
12 filed against AWS and its predecessor beginning in 1991 and 1992 that were
13 ultimately joined with actions filed in the Federal District Court for the Northern
14 District of California in 1996 and 1997 (Case No. C-96-03008-DLJ; C-97-00203-
15 DLJ; C-97-00425-DLJ; C-97-00457-DLJ). These actions included claims for
16 fraud, breach of fiduciary duty, breach of contract, RICO violations, and related
17 claims, all involving minority ownership interests in thirty-three markets
18 controlled by AWS resulted in a Stipulation of Settlement that went into effect in
19 May 1997, and is due to expire on January 1 , 2004 (the "Settlement
20 Agreement").
21

22 36. The Partnerships' operations and financial results have been
23 influenced (to an undisclosed extent) by the Settlement Agreement which allows
24 AWS to operate the Partnership as part of an integrated regional or nationwide
25 system. The Settlement Agreement allows AWS to continue certain accounting
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1 and management practices until December 31, 2003. AWS has not disclosed
2 the effects of the impending termination.

3 37. As part of the Settlement Agreement, AWS agreed to a cap on
4 switch-sharing fees at no more than 1.5 cents per minute of use. Since the
5 effective date of the Settlement Agreement, AWS continued to charge fees at
6 that rate even though the cost of providing the service has declined substantially
7 and, based upon costs disclosed by competitors, is believed to be less than
8 0.25 cents per minute of use. At no time did AWS disclose the cost of
9 providing the service and the resulting improper profits to AWS. The hidden
10 profits derived from switch sharing since the effective date of the Settlement
11 Agreement resulted in a substantial understatement of earnings and net worth
12 of the partnerships.

13 38. Although AWS provided audited financial statements for prior
14 years, AWS and its Affiliates refused to provide audited statements for the year
15 ended December 31, 2001, and have not otherwise disclosed the extent of
16 related-party transactions.

17 39. AWS embarked upon a plan to eliminate the minority
18 interests in the four Partnerships in March 2002. The first step in implementing
19 the plan was to make a series of coercive tender offers to purchase the minority
20 interests for a modest "premium" while warning that if the offers were not
21 accepted, the AWS Affiliates would call a special meeting of each Partnership
22 and vote their majority interests to sell all Partnership assets to another entity
23 wholly-owned by AWS and its subsidiaries and no "premium" would be paid. All
24 Plaintiffs rejected the coercive tender offer except S & D Partnership, which was
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1 induced to accept the offer with respect to its interest in Yakima Cellular.

2 40. Upon information and belief, the coercive tender offers were
3 timed to avoid giving the minority partners any participation in the prospective
4 growth of AWS's new Global System for Mobile Communications (which AWS
5 refers to as GSM/GPRS) service and ultimately the much anticipated 3-G
6 service allowing for high speed digital data transmission. According to trade
7 publications, AWS launched its GSM/GPRS service in the Denver metropolitan
8 area, including the area served by Fort Collins Cellular and Greeley Cellular
9 less than two weeks after taking action to terminate the Plaintiffs' interests.

10 41. In June and July 2002, AWS and its subsidiaries used their
11 domination and control of the Partnerships to vote to approve the proposed sale
12 of the assets of each of the Partnerships to new partnerships that were wholly
13 owned by AWS and its subsidiaries over the objection of the minority interests,
14 including the Plaintiffs.

15 42. No offers from unrelated parties were solicited and no
16 independent officers or executive committee members were involved in the
17 process.

18 43. Upon information and belief, AWS did not treat the
19 transaction as a "sale" of assets for tax purposes but rather as a distribution of
20 assets by the old partnerships followed by a contribution of the assets to the
21 new partnerships. AWS thus treated the transaction as a tax-free transaction as
22 to itself but as a taxable transaction to the minority partners.

23 44. AWS and AWS Affiliates hired Arthur Anderson to do
24 appraisals of the Partnerships. These appraisals served as the basis for the
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1 distributions paid to plaintiffs resulting from the transfer of Partnership assets to
2 new partnerships controlled solely by AWS. Upon information and belief, Arthur
3 Anderson relied on information and instructions provided by AWS and AWS
4 Affiliates. Arthur Anderson thus produced appraisals that failed to value the
5 Partnerships accurately by failing to consider: (1) the profitability and value of
6 the Partnerships as stand-alone entities that were not controlled by AWS; and
7 (2) the profitability and value of the Partnerships under ownership that did not
8 manipulate costs and accounting, as discussed above, to the detriment of the
9 Partnerships.

10 **V. CAUSES OF ACTION**

11 **COUNT ONE (BREACH OF FIDUCIARY DUTY)**

12 45. Plaintiffs repeat and re-allege each and every allegation
13 contained above as if fully set forth herein.

14 46. As the majority partners of the Partnerships, the AWS
15 Affiliates owed a fiduciary duty of loyalty and a duty of good faith and fair
16 dealing to the Plaintiffs as partners.

17 47. As the controlling person of the AWS Affiliates, AWS owed a
18 fiduciary duty of loyalty and a duty of good faith and fair dealing to the Plaintiffs.

19 48. AWS and the AWS Affiliates breached these duties by failing
20 to take actions to ensure that the Partnerships received as much from the sale
21 or transfer of Partnership assets as they would have received in an arms-length
22 transaction with a disinterested buyer. Such actions could have included
23 appointing a committee of independent persons to retain investment bankers
24 and attorneys to maximize the values received for the assets by soliciting bids
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1 from unrelated parties or encouraging competitive bidding.

2 49. AWS and the AWS Affiliates also breached their duties by: charging
3 excessive switch-sharing fees since the effective date of the Settlement Agreement
4 and by failing to account for the profits and benefits derived thereby; by failing to
5 disclosed the effect of the sunset of the Settlement Agreement at the end of 2003, by
6 failing to provide Plaintiffs with relevant data relating to the Partnerships' financial
7 performance and the purported sale of the Partnerships' assets; by arranging and
8 consummating the sham sales of the assets of the Partnerships to entities wholly
9 owned by AWS and AWS Affiliates; by causing the dissolution and liquidation of the
10 Partnerships; and, by using appraisals that it knew or should have known were
11 materially flawed to deprive the Plaintiffs of the fair market value of the respective
12 ownership interests.

13 50. As a direct result of the conduct of AWS and the AWS Affiliates,
14 Plaintiffs were damaged in an amount to be proved at trial.

15 **COUNT TWO (BREACH OF PARTNERSHIP AGREEMENTS)**

16 51. Plaintiffs repeat and re-allege each and every allegation contained
17 above as if fully set forth herein.

18 52. Through their control of the Partnerships, AWS and AWS Affiliates
19 caused the Partnerships to enter contracts and other arrangements with AWS-owned
20 entities providing for (i) excessive switch sharing fees since the effective date of the
21 Settlement Agreement and (ii) the ultimate "sale" of the Partnerships' assets. These
22 contracts and arrangements materially breached the provision in each partnership
23 agreement that allows the Partnership to enter into contracts with partners or their
24 affiliates, but only to the extent that such transactions are no less favorable to the
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1 Partnership than could readily be obtained if they were made with a person who is not
2 a partner or affiliate of a partner.

3 53. The purported sales of the assets of the Partnerships to new
4 partnerships solely owned by AWS are a sham in that the transactions have no
5 purpose or effect other than the forced sale of the Partnership interests of the
6 minority partners for inadequate consideration and the continuation of the
7 businesses by the majority partners as before. There was no sale of
8 Partnership assets within the meaning and intent of the term in the partnership
9 agreements.

10 54. By prematurely causing the dissolution of the Partnerships, AWS
11 and the AWS Affiliates breached the provision of the Partnership Agreements
12 that provided that the Partnerships were to continue for a term of ninety-nine
13 years. The Partnerships were wrongfully dissolved and the minority partners
14 are being deprived of their right to continue the Partnerships.

15 55. Defendants breached the covenant of good faith and fair dealing
16 implied in all contracts, including the partnership agreements.

17 56. AWS and its subsidiaries were served with notices of material
18 default and failed to cure the breaches of the partnership agreements within 30
19 days. Under these circumstances, according to the terms of the partnership
20 agreements, the non-defaulting partners, including the Plaintiffs, have the right
21 to acquire the interests of the respective AWS Affiliates for the amount of their
22 capital accounts. Plaintiffs are ready, willing and able to arrange for the
23 purchase of these interests. Specific performance of each of the partnership
24 agreements should be ordered. Alternatively, damages should be awarded in
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1 an amount sufficient to compensate Plaintiffs for the lost opportunity to
2 purchase the majority partner's interests at book value, a loss that Plaintiffs
3 estimate to be in excess of \$100 million.

4 **COUNT THREE (TORTIOUS INTERFERENCE)**

5 57. Plaintiffs repeat and re-allege each and every allegation contained
6 above as if fully set forth herein.

7 58. AWS caused the AWS Affiliates to breach their contractual
8 obligations to the Plaintiffs and tortiously interfered with and prevented the
9 performance of the AWS Affiliates according to the terms of the Partnership
10 Agreements.

11 **COUNT FOUR (CLAIM BY S&D PARTNERSHIP FOR INTENTIONAL**
12 **AND/OR NEGLIGENT MISREPRESENTATION)**

13 59. Plaintiffs repeat and re-allege each and every allegation contained
14 above as if fully set forth herein.

15 60. AWS and the AWS Affiliates and their common officers and
16 employees, knowingly, or with reckless disregard for the truth, caused
17 documents to be mailed or distributed to Plaintiff S & D Partnership that were
18 false or misleading with respect to material facts and/or failed to state material
19 facts necessary to make the statements made not misleading, including:

- 20 a. Defendants failed to disclose the true earnings
21 and net worth of the Partnerships after
22 adjustment to reflect the true costs of switch
23 sharing since the effective date of the
24 Settlement Agreement;

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- 1 b. Defendants failed to provide financial statements
2 explaining the methods of allocating revenues
3 and costs between the Partnerships and other
4 entities controlled by AWS;
5 c. AWS and its affiliates operated the Partnerships
6 as part of regional systems pursuant to a class
7 action settlement that is due to expire on
8 January 1, 2004; Defendants failed to disclose
9 how the sunset of this settlement agreement
10 would affect the Partnerships' value; and
11 d. Defendants failed to disclose the value
12 associated with the roll out of the new and
13 enhanced service plans and the prospects for
14 growth in revenue and earnings.

15 61. AWS and the AWS Affiliates, acting through their common officers
16 and employees, knowingly caused the foregoing material omissions and
17 misrepresentations to occur and are therefore liable to Plaintiff S & D
18 Partnership for any and all damages flowing from those material omissions and
19 misrepresentations.
20

21 62. Alternatively, AWS and the AWS Affiliates negligently issued to the
22 minority partners the false or misleading coercive tender offer documents on
23 which Plaintiff S&D Partnership relied on to its detriment.

24 63. AWS participated in the fraud alleged herein by virtue of its
25 knowledge of the related-party transactions, its control over and/or receipt
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1 and/or modification of the coercive tender offer documents, its control of the
2 shell AWS Affiliates and its orchestration of the sham "sale" transactions.

3 64. S & D Partnership relied on the accuracy of the defendants'
4 representations of value of the Partnerships. In ignorance of the falsity and/or
5 misleading nature of those statements, S & D Partnership accepted the coercive
6 tender offer on terms that were unfair.

7 65. As a direct result of AWS' conduct and the conduct of the AWS
8 Affiliates, S & D Partnership was damaged in an amount to be proved at trial.

9 **COUNT FIVE (UNJUST ENRICHMENT)**

10 66. Plaintiffs repeat and re-allege each and every allegation contained
11 above as if fully set forth herein.

12 67. In transferring their minority interests in the Partnerships, plaintiffs
13 conferred a benefit upon the Defendants, which benefit was realized by
14 Defendants, and the circumstances make it inequitable for Defendants to retain
15 that benefit.

16 **COUNT SIX (RESCISSION OF SALES OF ASSETS)**

17 68. Plaintiffs repeat and re-allege each and every allegation contained
18 above as if fully set forth herein.

19 69. The sham "sales of assets" were the product of fraud and illegality
20 and should be rescinded and declared void. The Plaintiffs should be allowed to
21 continue their ownership interests in the Partnerships in their previous
22 configurations.
23

24 **COUNT SEVEN (CONSTRUCTIVE TRUST)**

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1 70. Plaintiffs repeat and re-allege each and every allegation contained
2 above as if fully set forth herein.

3 71. Plaintiffs have the right under the circumstances and in fairness
4 and justice to a constructive trust over those assets that have been wrongfully
5 appropriated by AWS and the AWS Affiliates from the Partnerships and to
6 prevent the unjust enrichment of AWS and the AWS Affiliates.

7
8 **PRAYER FOR RELIEF**

9 WHEREFORE, Plaintiffs respectfully request the Court to enter
10 judgment against AWS and the AWS Affiliates, jointly and severally as follows:

- 11 a. For an order rescinding the "sales" of assets;
12 b. For an order rescinding the dissolution and
13 liquidation of the Partnerships;
14 c. For an order enforcing the terms of the
15 partnership agreements and directing that the
16 interests of the AWS Affiliates be transferred to
17 the minority partners of the respective
18 Partnerships, pro rata, upon payment of the
19 capital accounts of the AWS Affiliates;
20 d. For an order that an accounting be had of all
21 benefits derived from the use or appropriation of
22 Partnerships' property and opportunities of the
23 Partnerships;
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FIRST AMENDED COMPLAINT

No. CV03-2629

Cutler Nylander & Hayton
Professional Service Corporation
505 Madison Street, Suite 220
Seattle, Washington 98104
Telephone 206 340-4600

- 1 e. For an order imposing a constructive trust over
2 any such property or benefits thereby derived;
3 f. For monetary damages in an amount to be
4 proven at trial;
5 g. That the Court tax all of the costs of this
6 proceeding, including reasonable attorneys' fees
7 and experts' fees, against the Defendants; and
8 h. That the Court award such further and other
9 relief as may be deemed appropriate.
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11 DATED this 15th day of October, 2003.
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14 Cutler Nylander & Hayton, P.S.
15
16

17
18 By: Thomas W. Hayton
19 Thomas W. Hayton (WSBA # 5657)
20

21 And
22

23 John Oitzinger
24 Attorney at Law
25 314 N. Main Street
26 Helena, MT 59601

Attorneys for Plaintiffs

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No. CV03-2629

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Telephone 206 340-4600

The Honorable Marsha J. Pechman

FILED
LODGED
OCT 15 2003
ENTERED
RECEIVED
MR
AT SEATTLE
WESTERN DISTRICT COURT
DEPUTY

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

J & J CELCOM; LUPE AZEVEDO;
BRADY RANCH; WOODROW W.
HOLMES, Jr.; LUCILLE HOSS;
JAMES P. KENNEDY; DANIEL
MURRAY; RAJIVE OBEROI;
KENNETH L. RAMSEY; GARY R.
ROBBINS and JOANNE ROBBINS;
and S&D PARTNERSHIP,

Plaintiffs,

v.

AT&T WIRELESS SERVICES, INC;
McCAW CELLULAR INTERESTS,
INC.; AT&T WIRELESS SERVICES
OF COLORADO, LLC; AT&T
WIRELESS SERVICES OF IDAHO,
INC; AT&T WIRELESS SERVICES
OF WASHINGTON, LLC; BOISE
CITY CELLULAR PARTNERSHIP
(F/K/A NEW BOISE CITY CELLULAR
PARTNERSHIP); FORT COLLINS-
LOVELAND CELLULAR
TELEPHONE COMPANY (F/K/A
NEW FORT COLLINS-LOVELAND
CELLULAR TELEPHONE
COMPANY); GREELEY CELLULAR
COMPANY (F/K/A NEW GREELEY
CELLULAR COMPANY) and YAKIMA
CELLULAR TELEPHONE COMPANY
(F/K/A NEW YAKIMA CELLULAR
TELEPHONE COMPANY),

Defendants.

No. CV03-2629

CERTIFICATE OF SERVICE

Elizabeth C. Fuhrmann certifies and declares under penalty of perjury of the laws

No. C01-1548Z

CERTIFICATE OF SERVICE

ORIGINAL

Cutler Nylander & Hayton
Professional Service Corporation
505 Madison Street, Suite 220
Seattle, Washington 98104
Telephone 206 340-4600

1 of the State of Washington as follows:

2 That she is an employee with the law firm Cutler Nylander & Hayton, P.S., 505
3 Madison Street #220, Seattle, WA 98104; that on this 15th day of October, 2003, she
4 served upon counsel of record at the addresses and the manner described below, the
5 following documents:

- 6 1. **First Amended Complaint;**
7 2. **Certificate of Service.**

8
9 **SERVICE LIST**

10 **Attorney for Defendants:**

11 Brendan T. Mangan
12 Heller Ehrman White & McAuliffe
13 701 Fifth Avenue #6100
Seattle WA 98104

14 **(X) Hand Delivery**

15 ☐ Mail
☐ Facsimile

16 **Co-Counsel for Plaintiffs:**

17 John Oitzinger
18 314 North Main Street
19 PO Box 1271
Helena, MT 59624

20 ☐ Hand Delivery

21 **(X) Mail**
☐ Facsimile

22
23 Dated this 15th day of October, 2003.

24
25 
26 Elizabeth C. Fuhrmann

No. C01-1548Z

CERTIFICATE OF SERVICE

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